



[9110-05-P]

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–19147]

Exemption from Regulatory Requirements Limiting the Initiation of Flight

Training to 180 Days or Less for Aliens Who Have an Approved Security Threat Assessment

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of Temporary Exemption.

SUMMARY: The Transportation Security Administration (TSA) is granting a temporary exemption from certain requirements in 49 CFR part 1552 regarding the timeframe within which a flight school must initiate flight training for alien flight students (candidates) who have an approved TSA security threat assessment (STA). For the duration of this exemption, TSA grants an extension from 180 days to 365 calendar days for candidates to begin training if the candidate's information and fees for an STA were submitted on or between December 1, 2019 and September 1, 2020.

DATES: This exemption becomes effective on May 17, 2020 and remains in effect through September 1, 2020, unless otherwise modified by TSA through a notice published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Stephanie Hamilton, 571-227-2851 or via email at AFSP.Help@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Vision 100 – Century of Aviation Reauthorization Act of 2003 requires flight training providers to notify TSA when aliens and other individuals designated by the Secretary of Homeland Security, request flight training and ensure that these individuals obtain a favorable STA conducted by TSA before initiating training.¹ As required by TSA’s implementing regulations in 49 CFR part 1552, the STA for candidates² in the Alien Flight Student Program (AFSP) consists of criminal, immigration, and terrorism checks.³ To ensure the STA is valid at the time a candidate takes training, TSA’s regulations generally prohibit a flight training provider from initiating training of a candidate beyond 180 days after the candidate received an approval to train from TSA. *See* 49 CFR 1552.3(a)-(d).

On March 11, 2020, the World Health Organization characterized the Coronavirus Disease 2019 (COVID-19) outbreak as a global pandemic. On March 13, 2020, the President declared a National Emergency.⁴ Health experts within Federal, State, and local governments have strongly recommended that individuals practice social distancing when engaging with others whenever possible, to minimize the spread of SARS-CoV-2, the virus that causes COVID-19.

In response to these actions, a majority of U.S. States and foreign governments have imposed significant restrictions on commercial activities and individual movement,

¹ *See* Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, Sec. 113, Flight School Security (115 Stat. 597, 622; Nov. 19, 2001), *as amended by* Vision 100 – Century of Aviation Reauthorization Act, Pub. L. 108-176, Title VI, Aviation Security, sec. 612 (117 Stat. 2489, 2572; Dec. 12, 2003), codified at 49 U.S.C. 44939.

² A candidate is defined as “an alien or other individual designated by TSA who applies for flight training or recurrent training. It does not include an individual endorsed by the Department of Defense for flight training.” *See* 49 CFR 1552.2.

³ 49 CFR part 1552.

⁴ *See* Proclamation 9994, *Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020). Published at 85 FR 15337 (Mar. 18, 2020).

except when performing essential functions. The lifting of these restrictions is occurring at a state or local level and can vary in terms of the scope and pace of reopening various sectors of the economy.

Fifty-eight percent of AFSP training is provided to individuals who either have or are attempting to obtain airmen certifications for large aircraft used for the purpose of transporting cargo and/or passengers. The Flight School Association of North America estimates one-third of all flight training in the United States is conducted for aliens, many of whom are lawful permanent residents, or students participating in the student visitor exchange program. Many candidates who are already in the United States have discovered that fingerprint collection locations and domestic U.S. Citizenship and Immigration Services offices are closed. There can be additional delays for candidates outside the United States who may have difficulty obtaining U.S. visas in locations where U.S. consulates are closed or are in locations subject to travel restrictions.

In sum, under the present regulatory requirement, it may be impracticable for most candidates to begin training within 180 days if any of the following apply due to the COVID-19 public health emergency:

- Candidates cannot obtain a U.S. visa because U.S. consulates are closed;
- Candidates cannot get fingerprinted because the fingerprint collector is closed;
- A U.S. State, local, territorial, or tribal government, or a political subdivision of any of the foregoing has told a flight training provider to temporarily close its doors; or
- The flight training provider is implementing self-precautions and temporarily suspending training in order to prevent the spread of SARS-CoV-2, the virus that

causes COVID-19.

TSA's regulations also require a fee for each STA conducted by TSA. *See* 49 CFR 1552.5. If providers and candidates miss the window for initiating training, they will be required to remit another fee for the new STA.

During the COVID-19 crisis, it is vital to move cargo expeditiously through the supply chain, and to ensure that medical supplies and home goods reach healthcare centers and consumers. Aviation facilities and aircraft are an integral part of the supply chain and must continue operations throughout the public health emergency and after. Workers who support air transportation of cargo and passengers, including flight instructors, are considered by the DHS Cybersecurity and Infrastructure Security Agency (CISA) as essential.⁵

Authority and Determination

TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest.⁶ TSA has determined that it is in the public interest to grant an exemption from certain process requirements in 49 CFR part 1552 related to initiating flight training during the current National Emergency created by the COVID-19 crisis. This exemption will facilitate the timely resumption of U.S.-based aviation training for aliens to allow pilots to continue to provide vital services during the COVID-19 public health emergency, while TSA ensures effective transportation security vetting.

Without this exemption, TSA estimates more than 2,100 U.S. businesses may lose

⁵ CISA, April 17, 2020: Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response.

⁶ *See* 49 U.S.C. 114(q). The Administrator of TSA delegated this authority to the Executive Assistant Administrator for Operations Security, effective March 26, 2020, during the period of the National Emergency cited *supra*, n.4.

significant revenue before restrictions are limited, U.S.-entry restrictions are eased, and flight training businesses re-open at the end of the current crisis.⁷ This exemption also provides needed flexibility to the 4,500 candidates who have applied for training and meet the requirements of this exemption.⁸ Air transportation employees are essential workers necessary during the COVID-19 public health crisis to support the United States' transportation and logistics infrastructure.⁹ The flexibility provided by this exemption will ensure these individuals receive the training necessary to provide this support.

TSA has determined that there is little to no risk to transportation security associated with this exemption for the following reasons:

1. The exemption applies only to individuals who have already successfully completed a comprehensive STA;
2. The exemption applies to a specific group of individuals for a limited period of time subject to possible modification by TSA before the end of the effective period to ensure consistency with the duration and scope of the COVID-19 crisis;
3. TSA will continue to recurrently vet the subject group of individuals against Federal terrorism and national security-related watch lists and databases; and
4. TSA retains its full authority to immediately revoke or suspend an AFSP STA if TSA determines that the holder is no longer eligible, in accordance with 49

⁷ TSA uses internal AFSP program data on flight training providers and subject matter expertise to estimate the proportion of businesses that would benefit from this exemption.

⁸ TSA uses ASFP candidate data to estimate the affected population.

⁹ See Cybersecurity and Infrastructure Security Agency (CISA) Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response (March 19, 2020), available at: <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>.

CFR part 1552.

Exemption

1. *Eligibility.* This exemption applies to candidates in the AFSP who submitted the information and fees required for an STA on or between December 1, 2019, and September 1, 2020, and with respect to whom TSA subsequently informed the flight school that the candidate does not pose a threat to aviation or national security.
2. *Flight Training Provider Exemption.* For the duration of this exemption, a flight school may begin an eligible candidate's flight training within 365 calendar days of being informed by TSA that the candidate does not pose a threat to aviation or national security, or within 365 calendar days after more than 30 days have elapsed since TSA received all of the information and fees required by 49 CFR 1552.3. The flight training provider must continue to notify TSA when each candidate initiates a flight training event in accordance with 49 CFR part 1552.3.
3. *Continuation of Vetting.* For the duration of the exemption, TSA will continue to recurrently vet the subject group of individuals against Federal terrorism and national security-related watch lists and databases. TSA retains its full authority to immediately revoke or suspend an AFSP STA if TSA determines that the holder is no longer eligible, in accordance with 49 CFR part 1552.

Limits of Exemption: This extension does not apply to Category 1 training until the conditions specified in 49 CFR 1552.3(a)(4) are met. This extension

does not apply to Category 2 training until the conditions specified in 49 CFR 1552.3(b)(1)(iv) are met. This extension does not apply to any training category if a candidate's information and fee for an STA were submitted before December 1, 2019 or after September 1, 2020.

Stacey Fitzmaurice,

Executive Assistant Administrator for Operations Support.

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